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CHECK AGAINST DELIVERY

STATEMENT BY  
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71<sup>st</sup>

## **Chapter X**

### **(The Protection of the Environment in Relation to Armed Conflict)**

Mr. Chairman,

1. Concerning the topic of the protection of the environment in relation to armed conflicts, my Government would like to express its appreciation for the work of the Special Rapporteur, Ms Marie Jacobsson. We congratulate her on her very comprehensive report. I will focus on principles provisionally adopted by the Drafting Committee on the basis of the third report.
2. We consider that the temporal division between the periods of before, during and after armed conflict in the application of the principles is useful. Thus, generally, the present placement of draft principles in the different sections relating to the different phases is logical.
3. We note that within the Commission, there was debate whether the link between all of the draft principles and the general topic is close enough to justify their inclusion. We share this concern. In particular, the link between the protection of the environment in relation to armed conflict and peace operations and indigenous peoples respectively is perhaps too tenuous. Peace operations may operate in a situation of armed conflict but this is not necessarily the case. Moreover, they are normally not a party to an armed conflict. With regard to

indigenous peoples, the fact that they have a special relationship with their land and the living environment in itself seems insufficient reason to include this matter in draft principles on protection of the environment in armed conflicts.

4. Regarding the outcome of the work on this topic, we prefer this to be in the form of draft principles rather than draft Articles. With respect to the terminology employed, we would concur with several members of the Commission and are of the view that it is important to ensure that the terminology employed in the draft principles corresponds to the normative status intended for the topic. For this reason, we suggest that the use of “shall” and “should” be more carefully considered. In particular, we question whether the use of “shall” as it is now used in several draft principles is appropriate. This is the case for draft principles 8, 16 and 18. If the use of “shall” in these draft principles is intended to suggest that they reflect existing obligations under international law, we have serious doubts whether this is the case.
5. For example, draft principle 16, using ‘shall’, obliges parties to the conflict to remove or render harmless toxic and hazardous remnants of war under their jurisdiction or control that are causing or risk causing damage to the environment. We recognize that the Drafting Committee softened the language proposed by the Special Rapporteur by replacing the words “without delay after cessation of active hostilities” with “after an armed conflict.” Nevertheless, we



Commission demonstrate, the issue of whether – and if so which – exceptions or limitations exist to immunity for State officials from foreign criminal jurisdiction remains highly controversial. Considering the length of the Report and the many issues that it raises, I will limit my comments today to the most important aspects.

8. First, my Government acknowledges the importance of the fight against impunity and the necessity to hold accountable the perpetrators of the most serious crimes. However, we are not convinced by the way in which the necessity to fight impunity is used as justifying an exception to immunity. The topic

the availability of a particular forum and as such a point of procedure that

State officials and the immunity of the State itself in relation to international crimes and *jus cogens*. The former is directly derived from the latter. The approach should thus be the same, and my Government would follow the approach of the International Court of Justice in this. The Netherlands considers that the plea of immunity *ratione materiae* is unavailable for international crimes, including violations of *jus cogens*, since they are not and cannot be official acts. For State officials enjoying immunity *ratione personae*, however, the plea of immunity is available regardless of whether he or she is accused of an international crime.

13. Secondly, my Government is not convinced by the analogy between the way in which the Commission dealt with *jus cogens* in its work on State Responsibility and the work on immunity of State officials. The Articles on State Responsibility establish secondary norms applicable to establishing and invoking State Responsibility for breaches of *jus cogens*. They are not about the question of to which forum to turn to for invoking such responsibility. The law on immunities<sup>0 1 8i4 about h0 1 8i4 abou6mun from tof e</sup>

14. With respect to the topic of provisional application of treaties, we express our appreciation to the Special Rapporteur, Mr Juan Manuel Gómez-Robledo for his fourth report.
15. We have taken note of the debate in the Commission on the methodology of the current work, particularly concerning the question whether not or not to draw conclusions based (exclusively) on analogy. While we acknowledge that drawing conclusions by way of analogy may be useful since Article 25 of the Vienna Convention remains silent on the relationship with other provisions of the Convention, we share the words of caution expressed by members of the Commission that the conclusions arrived at should be supported by underlying State practice.
16. With respect to the question of reservations and provisional application, the question is whether reservations made at the time of signature, ratification etcetera would also apply when the treaty or any of its provisions are applied provisionally. The Special Rapporteur points out that no treaties provide for the formulation of reservations specifically in relation to provisional application. We would suggest that this is due to the fact that many treaties, including the examples mentioned by the Special Rapporteur, already limit the scope of provisional application to specific provisions.



17. Similarly, the law of treaties specifies the moment at which States may make reservations: i.e. when signing, ratifying, accepting, approving or acceding, in accordance with Article 19 of the Vienna Convention. My Government would consider that further analysis is required whether a reservation made at this stage is also applicable when the treaty or any of its provisions is applied provisionally. We would therefore welcome further analysis on this, including an analysis of the practice of States.

18. I thank you for your attention!